INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	7

CITATIONS

Cases:

American Surety Co. v. *Bankers' Savings and Loan Association*, 67 F. 2d 803	7
Brown v. *Gesellschaft Fur Drahtlose Telegraphie*, 104 F. 2d 227	6
Chicago, St. Paul, M. & O. Ry. Co. v. *Kulp*, 102 F. 2d 352	6
Defense Corporation v. *Lawrence Company*, 336 U. S. 631	4, 5
Gaynor v. *Metals Reserve Company*, 116 F. 2d 1011	4, 6
Higgins v. *California Prune and Apricot Grower*, 3 F. 2d 896	7
Keifer & Keifer v. *R.F.C.*, 306 U. S. 381	7
Kelly-Springfield Tire Co. v. *United States*, 110 F. 2d 823	7
State Farm Ins. Co. v. *Duel*, 324 U. S. 154	6
White v. *Higgins*, 116 F. 2d 312	6

Statute:

Joint Resolution (Public Law 109) of June 30, 1945, c. 215 59 Stat. 310	2

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 376

KEYES C. GAYNOR, PETITIONER

v.

METALS RESERVE COMPANY, A CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court wrote no opinion. The opinion of the United States Court of Appeals for the Eighth Circuit (R. 60-63) is reported at 174 F. 2d 286. The opinion of the United States Court of Appeals for the Eighth Circuit on the first appeal is reported at 166 F. 2d 1011.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on May 6, 1949 (R. 63). A petition for rehearing was

denied on August 3, 1949 (R. 67). The petition for a writ of certiorari was filed on October 7, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether, upon failure to substitute the Reconstruction Finance Corporation for the Metals Reserve Company as defendant within one year of the effective date of the Joint Resolution of June 30, 1945 (*infra*, pp. 2-3), the district court is without jurisdiction to try a cause of action on the merits against the Metals Reserve Company and the Court of Appeals is without jurisdiction to hear an appeal on the merits.

STATUTE INVOLVED

Joint Resolution (Public Law 109) of June 30, 1945, c. 215, 59 Stat. 310:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any other provision of law, all functions, powers, duties, and authority of the corporations hereinafter designated, are hereby transferred, together with all their documents, books of account, records, assets, and liabilities of every kind and nature, to Reconstruction Finance Corporation and shall be performed, exercised, and administered by that Corporation in the same manner and to the same extent and effect as if originally vested in Reconstruction Finance Corporation, and the designated corporations are hereby dissolved: Defense Plant Corporation, Metals Reserve Company,

Rubber Reserve Company, and Defense Supplies Corporation, created by Reconstruction Finance Corporation pursuant to the Act of June 25, 1940 (54 Stat. 572), and Disaster Loan Corporation, created by the Act of February 11, 1937 (50 Stat. 19), are hereby designated as the corporations to which this joint resolution applies.

Sec. 2. The Reconstruction Finance Corporation shall assume and be subject to all liabilities, whether arising out of contract or otherwise, of the corporations dissolved by this joint resolution. No suit, action, or other proceeding lawfully commenced by or against any of such corporations shall abate by reason of the enactment of this joint resolution, but the court, on motion or supplemental petition filed at any time within twelve months after the date of such enactment, showing a necessity for the survival of such suit, action, or other proceeding to obtain a determination of the questions involved, may allow the same to be maintained by or against the Reconstruction Finance Corporation.

Sec. 3. This joint resolution shall take effect on July 1, 1945.

Approved June 30, 1945.

STATEMENT

This action was originally brought by the petitioner Gaynor against the Metals Reserve Company in a state court of the State of South Dakota (Circuit Court of the Seventh Judicial District of the State of South Dakota for Custer County) on

March 30, 1945 (R. 1). The petitioner sought recovery against the Metals Reserve Company for mica sold and delivered and for damages resulting from the Metals Reserve Company's refusal to accept mica of the petitioner (R. 1-3).

On May 7, 1945, the action was removed to the United States District Court for the District of South Dakota, Western Division (R. 1, 3).

By the Joint Resolution of June 30, 1945, 59 Stat. 310 (Pub. L. No. 109), Congress dissolved the Metals Reserve Company and transferred all of its assets to the Reconstruction Finance Corporation which action was to take effect on July 1, 1945. On June 3, 1947, almost two years after the passage of the Joint Resolution, the respondent filed a motion for dismissal on the ground that the petitioner Gaynor had not moved the substitution of the Reconstruction Finance Corporation as defendant for the Metals Reserve Company within a year of the passage of Pub. L. No. 109 (R. 61). This motion was sustained by the district court on June 4, 1947, and the action was abated (R. 61). On appeal to the United States Court of Appeals for the Eighth Circuit, the dismissal was reversed and the case was remanded for trial, *Gaynor* v. *Metals Reserve Company,* 166 F. 2d 1011.[1]

Thereafter, the case proceeded to trial and after the conclusion of the petitioner's presentation in the district court, the court dismissed the action on

[1] At that time, the decision of this Court in *Defense Corporation* v. *Lawrence Company,* 336 U. S. 631, had not yet been handed down.

the ground that the petitioner had failed to prove by competent evidence that he had sold and delivered to the respondent any mica for which he had not been paid (R. 13-15). The evidence upon which the district court based its conclusion is set forth in the record (R. 25-44).

The petitioner then appealed from the judgment of the district court to the United States Court of Appeals for the Eighth Circuit on September 17, 1948 (R. 20, 21), and argument was heard on March 8, 1949 (R. 59). The United States Court of Appeals, on May 6, 1949, held, on the authority of *Defense Corporation* v. *Lawrence Company,* 336 U. S. 631 (decided April 18, 1949), that the district court was without jurisdiction to hear the cause of action on the merits and the appellate court was without jurisdiction to hear the appeal on the merits (174 F. 2d 286) (R. 60). It accordingly dismissed the appeal (R. 63). A motion for rehearing was denied on August 3, 1949 (R. 67).

ARGUMENT

This Court, in *Defense Corporation* v. *Lawrence Company*, 336 U. S. 631, was called upon to determine the effect of the Joint Resolution of June 30, 1945, upon an action in which there had been no substitution of the Reconstruction Finance Corporation for the dissolved, wholly-owned government corporation within one year of July 1, 1945. It stated (336 U. S. at 636):

> If Reconstruction Finance is not substituted within one year, *the action by or*

> *against Defense Supplies is, of course, at an end and the parties are left in status quo* * * * [italics added].

The court below not only correctly applied the *Lawrence Warehouse* case but reached the only conclusion possible in the light of that decision. After the expiration of the year, *i.e.* July 1, 1946, the posture of the case at bar, so far as the record shows (R. 3-10), was that an amended complaint and an answer thereto had been filed. On that date, action by petitioner against Metals Reserve Company was "at an end" and the parties were "left in status quo." Thereafter neither the district court nor the court below had any jurisdiction to consider the case on the merits.

But petitioner urges that the prior holding of the court below, in *Gaynor* v. *Metals Reserve Co.*, 166 F. 2d 1011—that the action had not abated but might be continued against Metals Reserve—became the law of the case and was controlling. This contention may be shortly disposed of. An intervening decision may even render inapplicable the doctrine of *res judicata*. *State Farm Ins. Co.* v. *Duel*, 324 U. S. 154, 162. *A fortiori* the doctrine of "law of the case" can import no less flexibility. *White* v. *Higgins*, 116 F. 2d 312, 317 (C. A. 1); *Brown* v. *Gesellschaft Fur Drahtlose Telegraphie*, 104 F. 2d 227, 228 (C. A. D. C.); *Chicago, St. Paul, M. & O. Ry. Co.* v. *Kulp*, 102 F. 2d 352, 354 (C. A. 8); *American Surety Co.* v. *Bankers' Savings and Loan Associa-*

tion, 67 F. 2d 803, 807 (C. A. 8); *Higgins* v. *California Prune and Apricot Grower,* 3 F. 2d 896, 898 (C. A. 2); *Kelly-Springfield Tire Co.* v. *United States,* 110 F. 2d 823, 827 (C. A. 3). Consequently, the decision of this Court in the *Lawrence Warehouse* case furnished ample justification for the action of the court below in departing from its prior ruling.

Finally, the provisions of state law and of the Federal Rules of Civil Procedure, upon which petitioner relies (Pet. 14-18) can not be thought to override a federal statute specifically directed at the problem at hand. That statute, being constitutionally unobjectionable (*Keifer & Keifer* v. *R. F. C.,* 306 U. S. 381, 389) must control.

CONCLUSION

We respectfully submit that the decision below is plainly correct and that the petition for a writ of certiorari should therefore be denied.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

PAUL A. SWEENEY,
DAVID B. BLISS,
Attorneys.

DECEMBER, 1949.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 864429 383